

**227.7103-16 Providing technical data to foreign governments, foreign contractors, or international organizations.**

Technical data may be released or disclosed to foreign governments, foreign contractors, or international organizations only if release or disclosure is otherwise permitted both by Federal export controls and other national security laws or regulations. Subject to such laws and regulations, the Department of Defense—

(a) May release or disclose technical data in which it has obtained unlimited rights to such foreign entities or authorize the use of such data by those entities; and

(b) Shall not release or disclose technical data for which restrictions on use, release, or disclosure have been asserted to foreign entities, or authorize the use of technical data by those entities, unless the intended recipient is subject to the same provisions as included in the use and non-disclosure agreement at 227.7103-7 and the requirements of the clause at 252.227-7103, Rights in Technical Data—Noncommercial Items, governing use, modification, reproduction, release, performance, display, or disclosure of such data have been satisfied.

**227.7103-17 Overseas contracts with foreign sources.**

(a) The clause at 252.227-7032, Rights in Technical Data and Computer Software (Foreign), may be used in contracts with foreign contractors to be performed overseas, except Canadian purchases (see paragraph (c) of this subsection), in lieu of the clause at 252.227-7013, Rights in Technical Data—Noncommercial Items, when the Government requires the unrestricted right to use, modify, reproduce, perform, display, release or disclose all technical data to be delivered under the contract. Do not use the clause in contracts for existing or special works.

(b) When the Government does not require unlimited rights, the clause at 252.227-7032 may be modified to accommodate the needs of a specific overseas procurement situation. The Government should obtain rights in the technical data that are not less than the rights the Government would have ob-

tained under the data rights clause(s) prescribed in this part for a comparable procurement performed within the United States or its outlying areas.

(c) Contracts for Canadian purchases shall include the appropriate data rights clause prescribed in this part for a comparable procurement performed within the United States or its outlying areas.

[56 FR 36389, July 31, 1991, as amended at 70 FR 35545, June 21, 2005]

**227.7104 Contracts under the Small Business Innovation Research (SBIR) Program.**

(a) Use the clause at 252.227-7018, Rights in Noncommercial Technical Data and Computer Software—Small Business Innovation Research (SBIR) Program, when technical data or computer software will be generated during performance of contracts under the SBIR program.

(b) Under the clause at 252.227-7018, the Government obtains a royalty-free license to use technical data marked with an SBIR data rights legend only for government purposes during the period commencing with contract award and ending five years after completion of the project under which the data were generated. Upon expiration of the five-year restrictive license, the Government has unlimited rights in the SBIR data. During the license period, the Government may not release or disclose SBIR data to any person other than its support services contractors except—

(1) For evaluational purposes;

(2) As expressly permitted by the contractor; or

(3) A use, release, or disclosure that is necessary for emergency repair or overhaul of items operated by the Government.

(c) Do not make any release or disclosure permitted by paragraph (b) of this section unless, prior to release or disclosure, the intended recipient is subject to the use and nondisclosure agreement at 227.7103-7.

(d) Use the clause at 252.227-7018 with its Alternate I in research contracts when the contracting officer determines, in consultation with counsel, that public dissemination by the contractor would be—

(1) In the interest of the Government; and

(2) Facilitated by the Government relinquishing its right to publish the work for sale, or to have others publish the work for sale on behalf of the Government.

(e) Use the following provision and clauses in SBIR solicitations and contracts that include the clause at 252.227-7018:

(1) 252.227-7016, Rights in Bid or Proposal Information;

(2) 252.227-7017, Identification and Assertion of Use, Release, or Disclosure Restrictions;

(3) 252.227-7019, Validation of Asserted Restrictions—Computer Software;

(4) 252.227-7030, Technical Data—Withholding of Payment; and

(5) 252.227-7037, Validation of Restrictive Markings on Technical Data (paragraph (e) of the clause contains information that must be included in a challenge).

(f) Use the following clauses and provision in SBIR solicitations and contracts in accordance with the guidance at 227.7103-6 (c) and (d):

(1) 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends; and

(2) 252.227-7028, Technical Data or Computer Software Previously Delivered to the Government.

[56 FR 36389, July 31, 1991, as amended at 60 FR 61598, Nov. 30, 1995; 62 FR 2614, Jan. 17, 1997; 69 FR 31912, June 8, 2004]

**227.7105 Contracts for the acquisition of existing works.**

**227.7105-1 General.**

(a) Existing works include motion pictures, television recordings, video recordings, and other audiovisual works in any medium; sound recordings in any medium; musical, dramatic, and literary works; pantomimes and choreographic works; pictorial, graphic, and sculptural works; and works of a similar nature. Usually, these or similar works were not first created, developed, generated, originated, prepared, or produced under a Government contract. Therefore, the Government must obtain a license in

the work if it intends to reproduce the work, distribute copies of the work, prepare derivative works, or perform or display the work publicly. When the Government is not responsible for the content of an existing work, it should require the copyright owner to indemnify the Government for liabilities that may arise out of the content, performance, use, or disclosure of such data.

(b) Follow the procedures at 227.7106 for works which will be first created, developed, generated, originated, prepared, or produced under a Government contract and the Government needs to control distribution of the work or has a specific need to obtain indemnity for liabilities that may arise out of the creation, content, performance, use, or disclosure of the work or from libelous or other unlawful material contained in the work. Follow the procedures at 227.7103 when the Government does not need to control distribution of such works or obtain such indemnities.

**227.7105-2 Acquisition of existing works without modification.**

(a) Use the clause at 252.227-7021, Rights in Data—Existing Works, in lieu of the clause at 252.227-7013, Rights in Technical Data—Noncommercial Items, in solicitations and contracts exclusively for existing works when—

(1) The existing works will be acquired without modification; and

(2) The Government requires the right to reproduce, prepare derivative works, or publicly perform or display the existing works; or

(3) The Government has a specific need to obtain indemnity for liabilities that may arise out of the content, performance, use, or disclosure of such data.

(b) The clause at 252.227-7021 provides the Government, and others acting on its behalf, a paid-up, non-exclusive, irrevocable, world-wide license to reproduce, prepare derivative works and publicly perform or display the works called for by a contract and to authorize others to do so for government purposes.

(c) A contract clause is not required to acquire existing works such as books, magazines and periodicals, in any storage or retrieval medium, when the Government will not reproduce the